

HUMAN SERVICES

DIVISION OF DEVELOPMENTAL DISABILITIES

Contributions for Care and Maintenance Requirements

Proposed New Rules: 10:46D

Authorized By: Gwendolyn L. Harris, Commissioner
Department of Human Services

Authority: P.L. 1995, c 155, N.J.S.A. 30:1-12, 30:4-25 et seq., 30:4-25.9 and 30:4-60 et seq.

Calendar Reference: See Summary below for explanation of exception to rulemaking calendar requirements

Proposal Number: PRN 2003-254

Submit comments by September 19, 2003 to:

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The agency proposal follows:

Summary

On September 8, 1998, the Division of Developmental Disabilities amended its eligibility rules to incorporate requirements for contributions by the individual for his or her costs of care and maintenance while in residential settings. These amendments were required by P.L. 1995, c. 155 which transferred responsibility for the assessment of the ability to pay for these costs from the County Adjuster to the Department of Human Services.

The Division amended the requirements for contributing to the cost of care and maintenance on November 15, 1999.

The Division finds the present rules, N.J.A.C. 10:46, that combine its eligibility requirements with the contributions assessment to be cumbersome. Consequently, the Division is deleting the contributions requirements from N.J.A.C. 10:46 and proposing them in these new rules, N.J.A.C. 10:46D. A notice of proposal amending N.J.A.C. 10:46 to delete the requirements for contributions is published elsewhere in this issue of the New Jersey Register.

The new rules are also intended to reflect changes announced by Commissioner Harris in the September 19, 2002 Plan , "New and Expanded Options for Consumers with Developmental Disabilities". The Division has 30,800 persons who are currently on its caseload. This number has more than doubled in the last decade. The Division has been reviewing how it provides services. Under the current system, the Division utilizes a waiting list for residential placement, as its main means to provide services. The Plan calls for new options for individuals living at home.

New Jersey lags behind other states in leveraging financial resources that would allow the Division to improve existing services and to develop new programs with a focus on individuals living at home. The Division needs to obtain additional revenue through broadening the use of Medicaid waivers and seeking a greater contribution toward services from consumers living in residential programs. Maximizing Federal revenues would enable the State to serve more New Jerseyans in need by re-investing new revenue in program expansion.

Current rules permit consumers living in residential programs to retain substantial amounts of income from Federal benefits like Supplemental Security Income (SSI). New Jersey is an outlier in the percentage of SSI benefits that can be retained by individuals who are in placement. SSI payments from the Federal government are given to individuals with disabilities to support their room and board expenses. When individuals live in residential programs, many of the room and board expenses are covered in the contract with the provider agency.

Other states have adopted policies requiring individuals living in residential settings to contribute larger percentages toward their room and board while in placement.

In New Jersey, most individuals under the current contribution to care structure keep about 50 percent of their SSI benefit or SSA benefit despite the fact that they may live in a group home that provides for most of their needs. When an individual accumulates more than \$2,000 in cash assets from any source, Medicaid eligibility is lost. The State must then assume 100 percent of an individual's cost, rather than being reimbursed for 50 percent. Federal revenue is then not available to expand services.

On September 19, 2002, Commissioner Harris outlined her plan for new and expanded options for New Jersey's Consumers with developmental disabilities and their families. As part of that effort, the Division is amending its rules for contributions to the cost of care and maintenance by the individual and clarifying the requirement to apply for eligible benefits (primarily SSI and Medicaid) prior to receiving waiver services. Residential placement is a waiver service.

The Division is amending and simplifying its rules regarding this process. Previously, the requirements for contributions for care and maintenance for residential services and application for benefits were contained in the Division's eligibility rules. While the issues are closely linked, the Division has found that combining these two processes in a single chapter was confusing to individuals attempting to understand how the process worked. Consequently, the Division is proposing to amend its eligibility rules at N.J.A.C. 10:46 to delete the requirements for contributions and application for benefits for residential services and to incorporate them into this new chapter.

Subchapter 1 contains the purpose, authority and scope of the rules as well as the definitions used in the rule.

Subchapter 2 deals with the financial assessment. The general standards contained in N.J.A.C. 10:46D-2.1 have been greatly simplified. The requirement to contribute begins prior to residential placement. The requirement for a determination of financial ability to pay, formerly found at N.J.A.C. 10:46-2.5, have been reduced. The determination of the county of legal settlement at 10:2.5 (g) through (i) has been deleted. All requirements for the individual to provide financial information while on a waiting list for services

previously at 10:46-2.1(l) have been deleted. Exceptions for support services only previously at 10:46-2.1(f) are deleted since the Division no longer uses this terminology.

This section also requires the individual to apply for benefits and comply with the requirements of these programs, primarily Medicaid, for which he or she may be eligible prior to the delivery of waiver services. The individual is also responsible to maintain those benefits. The Community Care Waiver (CCW) is a Title XIX Medicaid program, which ensures Federal financial participation for services. It is therefore necessary for individuals to apply for the Community Care Waiver prior to the receipt of these services in order to maximize Federal funds for program expansion for individuals not yet being offered services. New Jersey is aligning itself with other states with Community Care Waivers who have had this requirement. This section also points out that the individual remains responsible to reimburse the Division for the full costs of services should he or she be able to do so.

N.J.A.C. 10:46D-2.2 contains the process for determining the ability to contribute. This section differs from N.J.A.C. 10:46-2.5 (g) through (l) in that all reference to the county has been deleted. When the law was amended in 1995, responsibility for determination of the ability to contribute was removed from the county and the Department of Human Services became responsible for these determinations. Therefore, references to this process were no longer needed in the proposed rule.

Subchapter 3 contains the formulas used to calculate the amount of the contribution. The formula for persons with unearned income has been changed to require the individual to contribute 75 percent, rather than 50 percent of his or her Disposable Monthly Income. Under the previous rule, N.J.A.C. 10:46-2.6 (k) 2 and 3, the individual

could retain 50 percent of his or her income, there were many cases where individuals retained more money than they could reasonably spend in a month. Once accumulated funds exceeded \$2,000, the individual lost eligibility for Medicaid benefits. As a result, the Division has to cover these costs out-of-State dollars, which resulted in less money to serve those individuals waiting for services. This problem was present for those who received both SSI and SSA benefits. Proposed N.J.A.C. 10:46D-3.1 (b) through (g) also indicates those circumstances when the contribution may be less than 75 percent of the individual's unearned income.

The formula for income from wages was also amended to bring it into line with the manner in which Social Security assesses earned income. The previous rule, N.J.A.C. 10:46 - 2.6(k) 4, may have acted as a disincentive for individuals to become gainfully employed because the individuals contributed approximately 25 percent of their earned income. The proposed formula at N.J.A.C. 10:46D-3.1, will allow the individual to keep a greater portion of his or her earned income. The individual will still need to maintain his or her eligibility for Medicaid benefits. The formula at N.J.A.C. 10:46D-3.1, is calculated for individuals under 18 years of age.

Subchapter 4 allows an agency licensed under N.J.A.C. 10:44A, that serves the individual residentially, to be designated by the Division to collect the contribution. Where a person is placed in a community care residence licensed under N.J.A.C. 10:44B, the Division shall be responsible to collect the contribution.

There is no change in the text of Subchapter 5 on termination procedures from the current rule at N.J.A.C. 10:46-6.1. The statute enacted in 1995 allowed the Department to terminate services if the individual does not contribute. This Subchapter describes

the steps that may be taken by the Division when the individual does not contribute, despite an assessment that he or she has the ability to pay.

Subchapter 6 addresses appeals. Language has been added at N.J.A.C. 10:46D-6.1(b) to indicate that adjustments to the contribution based upon changes in income may be handled administratively. In fact, the majority of appeals received by the Division are not really appeals but rather indicate that the income of the individual has changed. In these instances, the Division can make an administrative adjustment to the contribution and no appeal is required. The wording concerning appeals that do not involve material facts has been simplified.

Because the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules will have a positive impact on the New Jersey system serving individuals with developmental disabilities. It will allow the Division to collect additional revenue and to maximize Federal revenues that can be re-invested in services to individuals living at home. This will allow the Division to serve more individuals who are currently waiting to receive services. Under the previous rules, 10:46-2.5(j), the individual was required to apply for and maintain all current and future benefits for which he or she might be eligible. In fact, there was no formal process to ensure that the individual complied. In this rule, it is clearly stated in N.J.A.C. 10:46D-1.1 Purpose: authority, that the individual must apply for, and maintain eligibility for those benefits. As clearly stated in the third paragraph of the Summary, of above rule, on September 19, 2002, the Commissioner of Human Services announced the development of a plan for new options for services. It is critical to this plan that the Division maximize Federal revenues that would enable the Division to serve more eligible persons.

The rules should also benefit the individual served. Although some individuals will be contributing a higher percentage of their income, the burden of ensuring that the individual remains eligible for Social Security benefits will be reduced. In addition, the rules will allow the individual to retain a substantially greater portion of his or her earned income from wages.

The rules are also expected to benefit provider agencies in that they will have the opportunity to collect the contribution directly. The Division has received comments from a variety of sources that it would be normal for individuals to pay directly for the costs of their living arrangement rather than sending the payment to a post office box, as

required in the previous rule at N.J.A.C. 10:46-2.5(f), which states that payment was to be made to the Treasurer, State of New Jersey and an address for a post office box in Newark, NJ was provided.

Economic Impact

The proposed new rules will have an impact on those persons already in residential services in that their contribution to the cost of care and maintenance will increase. This increase is justified in that their needs are already being met by the residential placement provided by the Division and the current contribution amount has caused individuals to lose their Medicaid eligibility. The new rules will still allow them to keep a substantial percentage of their income earned from wages. The amount is anticipated to be approximately \$170.00 a month from Supplemental Security Income (SSI) that the individual keeps to meet personal needs. Under the previous rules, specifically 10:46-2.5(j), the individual was required to apply for and maintain all current and future benefits for which he or she might be eligible. In fact, there was no formal process to ensure that the individual complied. In this rule, it is clearly stated at N.J.A.C. 10:46D-1.1 that the individual must apply for and maintain eligibility for those benefits.

Additionally, there will be a significant positive impact on those persons awaiting services because the money realized from the increased contributions and the requirement to apply to Medicaid before receiving waiver services will be reinvested in providing services to these and other individuals.

The Division anticipates no increased administrative costs associated with the new rules.

Federal Standards Statement

The proposed new rules concerning contributions are not subject to any Federal standards or requirements: therefore a Federal standards analysis is not applicable.

Jobs Impact

The proposed new rules will not generate jobs nor cause any jobs to be lost.

Agriculture Impact Statement

The proposed new rules will have no impact on agriculture in the State of New Jersey.

Regulatory Flexibility Analysis

The proposed new rules do have impact on small businesses if they choose to collect contributions directly from the individual they serve. Under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., agencies with fewer than 100 employees are small businesses.

It is not possible to determine how many small businesses may be affected by these rules. The agency and the Division must agree that the agency, not the Division, will collect the contribution. In those instances, the agency must document its efforts to collect the contribution. If there are three unsuccessful attempts, the agency may have the Division resume responsibility for the collection of the contribution.

The only additional compliance burden placed upon such entities is to document the amount collected or their inability to collect the contribution. Small businesses are not required to collect the contribution if they do not believe they can comply with the recording requirements. It is however, imperative, that any agency that elects to collect the contribution document these collections. Similarly, if they cannot collect the contribution and then ask the Division to amend their contract, they must document their efforts to collect the contribution. No capital cost or specialized professional services will be required to comply. No distinction can therefore be made based upon the size of the business. The Division believes these requirements to be reasonable and appropriate.

Smart Growth Impact

The Division does not anticipate the proposed new rules will have any impact upon the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the proposed new rules follows:

SUBCHAPTER 1 – GENERAL PROVISIONS

10:46D - 1.1 Purpose; authority

(a) Pursuant to N.J.S.A. 30:6D-1 (P.L. 1995, c.155), the Division of Developmental Disabilities, Department of Human Services, (Division) has established guidelines and criteria for determining the financial ability of persons served and that of their legally responsible relatives to contribute to the cost of care and maintenance when the individual receives residential services from the Division. The individual is also required to apply for all benefits, primarily Medicaid, for which they are eligible and comply with the requirements of this program prior to residential placement by the Division. He or she is also required to maintain eligibility for these benefits in compliance with the requirements of this chapter.

(b) The individual is responsible to maintain those benefits. Generally, to remain eligible, the individual cannot have more than \$2,000 in cash assets that are not excludable as a resource. The Division's Community Care Waiver is a Medicaid program, which provides Federal financial participation for services. It is therefore necessary for individuals to apply for Medicaid prior to the receipt of these services, to maximize Federal funds for program expansion for individuals not yet being offered services.

10:46D-1.2 Scope

- (a) The provisions of this chapter shall apply to all individuals before they are provided residential services from the Division. The individual is responsible to make application for Medicaid and all other benefits for which they are entitled, and to submit financial information to determine their ability to contribute toward the cost of that placement.
- (b) An individual must be determined eligible for services under N.J.A.C. 10:46 before the Division can provide residential services. For persons over 18 years of age, the individual shall be responsible to provide his or her financial information to the Division. For children under 18, the parents, otherwise referred to as the Legally Responsible Relatives in this rule, shall be responsible to provide financial information to the Division or its agent.
- (c) A determination of the ability to contribute is not required for individuals residing in supported living arrangements, in private intermediate care facilities for the mentally retarded/developmentally disabled (ICF/MR) placements not funded by the Division, or those receiving Challenge Grants or participating in the self-determination project. These individuals are required to apply for and maintain eligibility for Medicaid and all other benefits and will be required to directly use those benefits for expenses of daily living.

10:46D-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

"Assets or resources" means, but is not limited to, cash, trusts, bank accounts, certificates of deposit, stocks, bonds, mutual funds, real estate and savings bonds and personal property pursuant to N.J.S.A. 30:4-25.1a(8).

"Assignment" means the written agreement of the individual to give the Department of Human Services the right to receive and collect any and all proceeds due to the individual from such items as insurance policies, annuities and law suit settlements.

"Benefits" means all current and future sources of cash and health assistance from Federal, state or private entities including, but not limited to, Medicare, Medicaid, State and Federal funds and any third party support pursuant to statute, rule, order or by contract.

"Burial fund" means an identifiable fund that is clearly designated and set aside for an individual's burial expenses.

"CCW" means the Community Care Waiver, which is a Medicaid program that allows the State to waive certain Federal Medicaid eligibility criteria for individuals who meet eligibility for Division of Developmental Disabilities services and require an ICF/MR level of care.

“Challenge Grant” refers to a program in which the Division provides funds to an agency, which may be used in combination with other resources available to the individual, which will meet the individual’s needs sufficiently to allow the individual to be removed from the waiting list.

“Child” means an individual under 18 years of age.

“Commissioner” means the Commissioner of the State Department of Human Services.

“Consumer Price Index (CPI)” means the measure of the average change in prices over time in a fixed group of goods and services, as issued by the U.S. Department of Labor.

“Cost of care and maintenance” means the daily rate set by the State Board of Human Services for the residential placement of the individual or the daily rate set by the Commissioner of the Department of Human Services for community care homes (except respite homes) regulated under N.J.A.C. 10:44B, multiplied by the number of days the individual is, or was, in the placement.

“Dependent” means an individual who meets the State and Federal income tax requirements for being claimed by the individual or the LRR(s) on State and Federal income tax forms.

“Director” means the Director of the Division of Developmental Disabilities.

“Family” means the LRR(s), any dependent minors and any other person(s) who are claimed on the LRR(s)’ income tax forms, and the individual receiving Division services.

"Family maintenance standard (FMS)" means the income needed to meet a family's minimum needs. The FMS establishes the lower limit on the charges to the individual and/or the LRR for the individual's care and maintenance. See N.J.A.C. 10:46-2.5

"Fixed income" means that the person is retired, receiving disability benefits, receiving public assistance or is not otherwise actively employed.

"Income" means wages, benefits, interest earned, pensions, annuity payments, and support from a third party pursuant to statute, rule or order or by contract or any other receipt pursuant to N.J.S.A. 30:4-25.1a(7). Income does not include income earned by an individual receiving services, which is below the minimum wage rate.

"Interdisciplinary team" means an individually constituted group responsible for the development of a single, integrated plan for the individual. The team shall consist of the individual receiving services; the legal guardian, the parents or family member (if the adult desires that the parent or family member be present); those persons who work most directly with the individual served; and professionals and representatives of service areas who are relevant to the identification of the individual's needs and the design and evaluation of programs to meet them.

"Legally responsible relative (LRR)" means a spouse, mother, father or adult child of an individual receiving services who is statutorily responsible for the cost of care and maintenance pursuant to N.J.S.A. 30:4-66.

"Marginal income" means the total amount remaining after the cost of the FMS is subtracted from the disposable income.

"Medical cost standard (MCS)" means the minimum amount needed to meet a family's medical cost. The MCS establishes a maximum limit on the charges to be included in the FMS. See N.J.A.C. 10:46D-2.5.

"Other interested party" means representative payee, trustee or executor, or guardian of the property, as applicable.

"Plan to achieve self support (PASS)" means a written course of action approved by the Social Security Administration in accordance with 20 C.F.R. 416.1226. A PASS allows an individual to set aside income and/or resources for a specified period of time for a work goal. Resources set aside under a PASS are not counted toward the \$2,000 resource limit for SSI eligibility purposes. If income is set aside under a PASS, it is not counted in determining the SSI benefit payment amount. A PASS may be used to set aside money for education, vocational training, or starting a business.

"Residential placement" means that the individual's living arrangement is funded, fully or partially, by the Division in an appropriately licensed program including, but not limited to, community residences as defined in N.J.A.C. 10:44A, community care residences, as defined in N.J.A.C. 10:44B, private licensed facilities for persons with developmental disabilities, as defined in N.J.A.C. 10:47, and appropriately licensed out-of-State facilities under contract with the Division.

"Self-determination" means the Division's program which allows an individual with developmental disabilities, in connection with his or her legal guardian, if any, family and selected friends to select appropriate services and supports and determine how an individual budget, as well as individual, family and community resources, can be used to develop a living arrangement such as shared living, supported living and other individualized housing options, and allow the individual to be a greater part of their community.

"Supported living," means a form of community residence as defined at N.J.A.C. 10:44A-1.3 in which the individual is responsible to pay for his or her room and board.

"Termination of services" means action taken by the Division under the circumstances set forth in N.J.A.C. 10:46-6 when an individual, LRR(s) or any other responsible party fails to make the assessed payment.

"Treasury Formula-DDD" means the method used by the Division to determine the financial ability of an individual or LRR(s) to pay for care and maintenance for an individual receiving services, in accordance with N.J.A.C. 10:46D-2.5.

"Unearned income" means income from sources other than wages. This includes, but is not limited to, Social Security benefits, Supplemental Security Income, retirement benefits, trust funds not designated as "special needs trusts" and other sources.

SUBCHAPTER 2 – FINANCIAL CRITERIA

10:46D-2.1 General standards

- (a) The individual or his or her legally responsible relative shall be responsible to apply for Medicaid and to maintain eligibility for these benefits. The individual or his or her legally responsible relative shall also submit complete financial information necessary to assess contribution to care prior to placement or the delivery of services by the Division.
- (b) The individual or his or her legally responsible relative shall be responsible to comply with all requirements to maintain continued eligibility for Medicaid benefits during the time services are provided by the Division.
- (c) At the time of an offer of placement, the individual, legal guardian and/or his or her LRR(s) shall be advised in writing by Division staff that it will be necessary to apply for Medicaid and all other benefits and to submit financial information in order for the Division to determine the ability of the individual and/or LRR(s) to contribute to the cost of care.
- (d) The ability to contribute shall be reevaluated no less than annually, unless changed circumstances warrant more frequent evaluation as set forth at N.J.A.C. 10:46D-2.2(i). The individual, legal guardian, or other responsible parties shall provide all documents requested, including tax returns.

- (e) The individual, legal guardian or other interested party may choose to manage the person's benefits.
- (f) Although the individual is required to contribute to the cost of care, those contributions do not cover the full cost of care. The individual or other responsible parties remain responsible to repay the full cost of care if at some future point the resources become available to do so. For example, the Division may seek to recover the full costs of care when an individual comes into an inheritance.
 - 1. The Department shall file a lien against the real and personal property of the individual or legally responsible relative for the full costs of care and maintenance.
 - 2. Should resources become available to repay the full cost of care, any amount already paid as contributions shall be deducted from the full costs.
- (g) Eligibility for services shall not be denied if the other eligibility criteria are met, but the individual does not have the ability to contribute to the cost of care and maintenance. The individual shall be required to make a good faith effort to apply for benefits for which they may be entitled and comply with all the requirements for eligibility for benefits. If benefits are denied, the individual shall provide documentation of the denial that shall be included in the client record.

- (h) Individuals who are 18 years and older or their guardians shall forward to the Division financial information concerning the individual as necessary to assess the contribution to care.
- (i) For individuals who are under 18 years old, his or her legally responsible relative shall forward to the Division financial information concerning the legally responsible relative(s) as necessary to assess the contribution to care.
- (j) Should an individual be residentially placed by the Division on an emergency basis, the information required for a financial determination is due at the regional office for the area in which the placement is located no more than 28 days following the date of placement. If the information is not provided within the required time frames, the Division may consider the individual's circumstances on a case-by-case basis. Failure to provide the required documentation may result in the Department seeking any of the remedies set forth in N.J.A.C. 10:46D-5.1.

10:46D-2.2 Determination of financial ability to pay

- (a) The individual or his or her legally responsible relative shall be required to apply for Medicaid and all other benefits and to provide financial information, including, but not limited to, assets, resources, income, or insurance. The individual or his or her legally responsible relative shall comply with all requirements of Medicaid and N.J.A.C. 10:46D-1.1 to maintain eligibility for benefits.
- (b) The individual is required to fulfill the obligations under N.J.A.C. 10:46D-2.2, prior to the provision of residential services by the Division.
- (c) The Division or its agent shall complete the initial assessment. The Division shall conduct the annual reassessment unless an agency licensed under N.J.A.C. 10:44A has been designated to collect the contribution. If an agency has been designated, the agency shall conduct the reassessment.
 - 1. The individual, his or her legal guardian or LRR(s), shall authorize the release of information necessary to complete the financial assessment and annual reviews, at the time of the application for eligibility.
 - 2. All information required to complete the financial assessment shall be kept confidential pursuant to N.J.S.A. 30:4-24.3, except to the extent necessary to enforce the obligation to contribute.

- (d) The individual shall be assessed according to the formula of financial ability to pay at N.J.A.C. 10:46D-3.1 to determine the individual's or legally responsible relative's ability to pay for all or part of his or her cost of care and maintenance as fixed by the State Board of Human Services or the Commissioner.
- (e) A written notice shall be sent which informs the individual, legal guardian and/or LRR(s) of the figures used and how the amount due was calculated.
- (f) The individual, legal guardian, LRR(s) and/or other responsible parties may, at any time, inquire as to how the particular amount due to be paid was determined.
- (g) The individual, LRR(s), and/or other responsible parties shall make such payments as are required by N.J.A.C. 10:46D-3.1 or 3.2 for the cost of care. The individual or legally responsible relative shall receive written instructions informing them to whom payment shall be made.
- (h) Payment calculations for the individual and/or LRR(s) shall be reviewed and revised annually, by the Division.
- (i) If the individual or legally responsible relative's income changes prior to the annual reassessment, the individual, other responsible parties or LRR(s) shall immediately notify in writing, the administrative head of the developmental center or agency providing residential services. In the case of the agency providing residential services, the agency shall be responsible to contact the Division.

- (j) The annual calendar year increases to Social Security benefits and other periodic increases to benefits shall not be grounds for a revision to the annual budget for expenses. No requests for a revision of the assessed contribution for the cost of care and maintenance may be made under this circumstance. This increase shall be considered at the time of the next assessment.

SUBCHAPTER 3 – TREASURY FORMULA - DDD

10:46D - 3.1 DDD Formula A - DDD (A) for persons over age 18

- (a) Individuals over age 18 without financial dependents who have unearned income shall contribute in accordance with the following Treasury Formula - DDD (A):
 - 1. Total Monthly Net Income less the personal needs allowance (PNA) and, where documented, a plan to achieve self-support (PASS) = Disposable Monthly Income.
 - i. Where an individual has a PASS, as defined in 20 C.F.R. 416.1226, and approved by the Social Security Administration, that amount shall be deducted from the Total Monthly Net Income.
 - ii. A copy of the PASS, as approved by the Social Security Administration, shall be provided to the Division by the individual.

- iii. The PASS may be in effect for 18 months and may be extended for another 18 months up to an overall limit of 48 months, as approved by the Social Security Administration.
 - iv. The resources excluded under the PASS shall be deducted from the Total Monthly Net Income for the term of the plan, or until there is evidence that the time schedule has been completed, or the goal has been achieved, or the plan is not followed or the plan has been abandoned.
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- (b) Seventy-five percent of the Disposable Monthly Income shall be contributed to the cost of care and maintenance. If the monthly contribution is less than \$20.00, the contribution shall be waived.
 - (c) The individual or his or her representative payee is responsible to keep his or her accumulated funds under \$2,000 to ensure continued eligibility for CCW benefits.
 - (d) Where an individual is required to contribute to a HUD rental, or otherwise pays directly for his or her housing costs as indicated in the Division's contract with the provider agency, that amount shall be deducted from the amount contributed to the cost of care and maintenance.

- (e) A one-time allowance of up to \$2,000 may be deducted from the contribution for the cost associated with the appointment of a private guardian. A copy of the Court Order shall be provided to the Division by the guardian, once the guardian has been appointed. If, for any reason, any part of the allowance is not used for the appointment of a guardian, the unused amount of the allowance may be collected in one sum at a time established by the Division.
- (f) The individual may utilize up to six percent of his or her total annual income for the provision of private guardianship without Court Order. The six percent may be exceeded under Court Order for an additional percentage. This expense shall not be permitted where the Division provides guardianship through the Bureau of Guardianship Services.
- (g) Any request to retain funds beyond 25 percent shall be based exclusively on the following circumstances. The request to retain additional funds shall be made to the case manager, be reviewed by the IDT team and approved by the assigned State business office. Retention of additional funds is subject to the annual reassessment. The individual or representative payee shall provide verification of the extraordinary need which shall be limited to the following circumstances:
 - 1. The individual's reasonable costs related to food or shelter, including heat and utilities in a supervised apartment that exceed the amount provided in the agency contract;
 - 2. Major "unavoidable" medical costs that are covered by Medicaid but exceed the frequency of service established by Medicaid;

3. Replacement of personal items due to destructive behavior based upon documentation in a specific behavior plan and not covered by the contract or third party;
4. For individuals who do not already have one, establishment of an irrevocable burial fund. The individual shall be permitted to retain no more than an additional five percent per month of the Disposable Income until such time as the burial contract is paid in full; and
5. For individuals who will move from a residential placement to independent living within six months, the individual may retain up to \$2,000 to establish his or her household. Once the individual lives independently, he or she will have all his or her funds available; no contribution is required. The \$2,000 must be spent as it is needed; the individual cannot accumulate these funds.

(h) All earnings from employment below minimum wage shall be exempt from determining an individual's available income and shall not be considered part of the individual's disposable income. Contributions to the cost of care and maintenance from employment earnings at or above minimum wage shall be computed similar to the way in which the Social Security Administration counts earned income for Supplemental Security Income purposes. Contributions shall be determined as follows:

1. The first \$85.00 of wages earned each month shall be exempt from any contribution requirements.
2. After the first \$85.00, one half of all wages earned will be excluded;

3. After one half of all wages earned are excluded, an additional one half of earnings are excluded because the individual's Supplemental Security Income cash benefit is reduced by one dollar for every two dollars earned.
 4. After this second exclusion, 30 percent of all wages earned will be contributed toward the cost of care and maintenance. If the monthly payment is less than \$20.00, the contribution requirement shall be waived.
- (i) The individual or his or her representative payee may utilize the funds from earned income as he or she determines appropriate however, he or she is responsible maintain continued eligibility for Medicaid benefits.

10:46D-3.2 DDD Formula B - DDD (B) for individuals under age 18

- (a) This section shall apply to the individual under age 18 being served, LRR(s) or any other person responsible for the estate of such individual and/or LRR(s). The family maintenance standard for a family of four, for calendar year 2003, is \$23,812; the medical cost standard for a family of four is \$5,467 and the tuition deduction shall be revised annually, using the Consumer Price Index figures then applicable and the cost for in-State tuition at Rutgers, the State University, \$5,770 for school year 2002. These revisions shall be published annually by the Department as public notices in the New Jersey Register. Additionally, the

Department shall publish in the New Jersey Register, the cost of care and maintenance rates as established by the State Board of Human Services.

- (b) The Treasury Formula - DDD (B) charges 20 percent of family income above a minimum cost of living standard to clients with financial dependents (claimed on individual's State and Federal income tax forms) and LRR(s) except as provided in (l) below.
- (c) The family maintenance standard (FMS) shall be used to define the income necessary to meet a family's minimal needs. The FMS establishes the lower ceiling on charges by assuring that payments to the Department do not reduce the family's income below this amount. The FMS is tied to an authoritative cost of living standard that reflects inflationary increases. Adjustments in the FMS are made by using the current available 12-month change in the Consumer Price Index (CPI), October through October, for Urban Wage Earners and Clerical Workers for New York/Northeastern New Jersey and the Philadelphia Metropolitan regions. This CPI standard, compiled for a family of four, is changed into equivalent incomes for various family sizes using a scale provided by the Federal government.
- (d) The family maintenance standard shall be calculated by the Department in the following manner.
 - 1. Step 1 - Indicate adjustment months. The adjustment months will be the months of October of the previous year and October of the current year.

2. Step 2 - Determine the difference in the Consumer Price Index. For each region, determine the difference in the Consumer Price Index of "all items" by subtracting last October's CPI from the index information received from the current October report.
 3. Step 3 - Calculate the Consumer Price increase or decrease. Calculate the percentage increase or decrease in the CPI for each region. The difference for each region divided by last October's CPI by region will equal the percentage of increase or decrease.
 4. Step 4 - Determine average increase or decrease. Calculate the average or the percentage increases or decreases for the regions.
 5. Step 5 - Adjust the FMS Base (a family of four). Multiply the current standard by the average regional CPI increase or decrease calculated in Step 4, and add the answer to, if an increase, or subtract the answer from, if a decrease, the current standard to obtain the new standard.
- (e) The medical cost standard shall be calculated by the Department using the same process described in (d) above for the FMS. The MCS computation, however, only uses the medical care cost component of the CPI.
- (f) The deduction for college tuition shall be the actual college tuition cost paid, but shall not exceed the maximum of the annual in-State tuition expenses for Rutgers University. The deduction shall be net of any scholarships, awards or

grants, and shall cover tuition paid but shall not cover such items as room, board, books and lab fees. The maximum college tuition deduction for school *year 2002-2003 is \$5,770*. This shall be revised annually as required by (a) above.

(g) The Treasury Formula - DDD (B) allows deductions from total income to accurately determine the disposable income. Allowable deductions shall be as follows:

1. Major "unavoidable" expenses such as non-insured medical expenses in excess of the medical cost standard (MCS);
2. Alimony payments or other court-ordered monthly contributions;
3. College tuition in accordance with (f) above;
4. Child care expenses which comply with current Federal income tax guidelines for the Federal child care credit; and
5. Catastrophic events.

- i. Deductions for catastrophic events shall include documented personal property losses from theft or natural catastrophes such as fire, flood or storm. Deductible losses resulting from a natural catastrophe shall have been caused by a sudden and destructive force. Damages occurring over

time, such as termite infestation, or residing or painting a house as part of regular maintenance shall not be deductible losses. Situations resulting from extreme financial stress shall be considered as a catastrophic event. Some examples include large debts due to prolonged unemployment and extraordinary business losses. The individual and/or LRR(s) shall provide verification of the claimed deduction(s).

- (h) The individual and/or LRR(s) shall provide to the Department State and Federal income tax forms and wage statements in all cases, except when the family can establish status as recipients of public assistance.
- (i) The total funds remaining, after the cost of the appropriate FMS is subtracted from the disposable income, shall be the marginal income. The individual or LRR(s) shall contribute 20 percent of the marginal income.
- (j) Individuals with financial dependents, as defined in (l) below, and LRR(s) shall contribute in accordance with the following Treasury Formula - DDD (B):

Total Annual Income less Income Taxes and Allowable Deductions =
Disposable Income

Disposable Income less Family Maintenance Standard = Marginal Income

Marginal Income multiplied by .20 then divided by 12 = Monthly Charge

10:46D-3.3 DDD Formula A – DDD (A) for married persons over age 18

(a) A married individual receiving residential services shall use the appropriate Treasury Formula - DDD as set forth below:

1. If two individuals who are married have no dependents and are living together or separately in Division residential placements each individual shall be assessed as an individual without dependents pursuant to Treasury Formula-DDD at N.J.A.C. 10:46D-3.1.
2. If an individual is residentially placed by the Division and has a spouse and/or dependents who live elsewhere and the spouse and dependents receive public assistance and/or other Federal or State benefits for themselves only, the spouse and/or dependents shall have no financial responsibility for the cost of the individual's care and maintenance. The individual shall be assessed as an individual without dependents pursuant to Treasury Formula-DDD at N.J.A.C. 10:46D-3.1.
3. If an individual is residentially placed by the Division, and has a spouse who resides elsewhere and the spouse has income and the dependents may or may not receive public assistance or benefits, the spouse's income shall be assessed pursuant to N.J.A.C. 10:46D-3.2(j). The individual's income and benefits shall

also be reviewed to determine past financial support to the dependents. If there is no evidence that support has been provided by the individual to dependents, the individual's income and benefits shall be assessed as an individual without dependents pursuant to Treasury Formula-DDD at N.J.A.C. 10:46D-3.1.

4. If an individual is residentially placed by the Division and has a spouse, who resides elsewhere, and the spouse has an income and there are no dependents, the spouse's income shall be assessed pursuant to N.J.A.C. 10:46D-3.2. The individual shall be assessed as an individual without dependents pursuant to Treasury Formula-DDD at N.J.A.C. 10:46D-3.1.
5. If an individual is residentially placed by the Division and is financially responsible for a dependent and no public assistance or benefits are received on behalf of the dependent, the individual's income and benefits shall be assessed pursuant to Treasury Formula-DDD at N.J.A.C. 10:46D-3.2.

- (b) Assets shall be reported as such by the individual and LRR(s). The Department shall place a lien against the individual's assets for the unpaid cost of care and maintenance. A lien shall be placed against the assets of a LRR(s) for any unpaid portion of the LRR's required payments.

- (c) The individual and/or the LRR(s) shall supply information to the Department or its agent regarding current and former residences and financial circumstances.
- (e) Financial information shall include a full disclosure of income, assets, resources and benefits. The individual and/or the LRR(s) shall supply to the Department information regarding insurance coverage, including name and address of any insurance company(s) providing coverage, and the identification number(s) applicable to the individual.
 - 1. The data required by (d) above shall be the primary source of information for the Department's investigation into legal settlement and the ability to contribute toward the care and maintenance of the individual. Where appropriate, the Department shall review other records, such as property tax records and any other source related to the information required.
 - 2. The required information shall be updated annually by the individual and/or his or her LRR(s), or guardian or other person acting on behalf of the individual, using forms provided by the Department. The completed forms shall be returned to the Department or its agent within 20 days of the date mailed.
- (e) The individual, his or her LRR(s), legal guardian or other person acting on behalf of the individual shall notify the Department in writing of any change in the information submitted in accordance with (d) above.

- (f) The individual shall receive a minimum personal needs allowance of \$40.00 per month from the funds received by the representative payee or from the individual's income. The personal needs allowance shall be used by the individual for his or her personal spending.
- (g) Purchase made with the individual's funds shall be the personal property of that individual and shall be reserved for that individual's use.

SUBCHAPTER 4 – PROVIDER RESPONSIBILITIES

10:46D-4.1 Requirements

- (a) The Division may designate the agency licensed under N.J.A.C. 10:44A, which services the individual to collect room and board directly from the person served.
 - 1. The contract between the Division and the agency shall stipulate the terms under which the agency shall collect contributions.
 - 2. The agency may become representative payee for the individual.
 - 3. Where the agency is not the representative payee, the agency shall be responsible to collect the fee directly from the individual, legally responsible relative or representative payee.
- (b) If the agency documents three separate unsuccessful attempts to collect the contribution, the Division shall assume responsibility for the collection of the

contribution. In these instances, the Division shall apply for a change in representative payee.

- (c) The Division shall maintain responsibility for the collection of the contribution from the individual or representative payee where the individual is placed in a community care residence licensed under N.J.A.C. 10:44B or the individual is placed in a private institution licensed under N.J.A.C. 10:47 or out-of-State.

SUBCHAPTER 5. TERMINATION

10:46D-5.1 Notice of termination

- (a) While N.J.S.A. 30:4-25.9 provides the Division with the ability to terminate any services to the eligible individual within 60 days if the conditions of eligibility are not complied with, when the assessed contribution to the cost of care and maintenance is not received in a timely fashion, in all instances the Division will take a number of interim steps prior to initiating such final action as delineated in this section.
- (b) When the required monthly payment has not been received by 60 days past the due date, the Division shall notify, in writing, the individual, LRR(s), other responsible parties and, if different, the individual's legal guardian, that the payment is at least 60 days past due.

- i. The Division shall require all payments to be made within 10 days of the date of the notification or negotiate a schedule of repayments.
 - ii. If all payments due are not received within the 10 day or negotiated period, the Division shall notify, in writing, the individual, his or her LRR(s), other responsible parties and, if different, his or her legal guardian that the Division may initiate termination, collection or other appropriate action. The notice shall include information regarding the right to appeal this determination in accordance with N.J.A.C. 10:46-7.
- (c) A notice shall be sent within 30 days of the date specified by the Division in accordance with (b) above, to the provider of the placement, consistent with the terms of this subchapter, indicating that the Division may initiate termination, collection or other appropriate action due to the lack of payment.
- (d) When there is a representative payee who has not paid the assessed amount, a notice shall be sent to the Social Security Administration or other agency or person administering benefits that the individual is in jeopardy of having his or her placement terminated. The agency or person administering benefits shall be advised that the representative payee has not made payment for services, including food and shelter.
- (e) If the full or negotiated payment is received prior to termination of placement, placement shall continue uninterrupted.

- (f) Should the individual and/or LRR(s) request a revision of the amount to be paid or notify the Division of an inability to pay in accordance with N.J.A.C. 10:46D-2.2 (l), the Division shall investigate the circumstances.
1. The notice that the Division may initiate termination, collection or other appropriate action shall remain in effect while the Division conducts the investigation.
 2. While the Division is conducting the investigation, the Division shall continue funding the placement until a determination whether an adjustment in the amount to be paid is made.
- (g) If the individual is in a residential placement and the individual is capable of paying for the cost of care and maintenance but has refused to do so, a notice shall be sent by the Division establishing a date certain upon which funding of that program shall cease.
1. If the individual is incapable of paying and the LRR(s) refuses to pay the assessed amount, the Department shall file a collection or other appropriate action to recover the portion of cost which the LRR(s) is responsible to pay.
- (h) If a competent individual is in a residential placement and is refusing to pay the assessed amount, the regional staff shall meet with the individual and other interested parties no fewer than 30 days before the scheduled date for services

to end to discuss the individual's future living arrangements. The individual and other interested parties shall again be requested to make full payment at that meeting. If the competent individual who is capable of paying for the cost of services will not make payment, the Division may seek appropriate relief, including, but not limited to, a court order of removal, collection, wage garnishment and/or other appropriate action for failure to make payments.

- (i) If the LRR(s) will not make payment, the Division shall, if appropriate, seek to return a minor child to the LRR(s) residence. If returning the individual home is deemed not feasible by the Division due to the risk of abuse, neglect or exploitation, the Division shall initiate proceedings in Superior Court to obtain payment from the LRR(s) in addition to other available actions.
- (j) Termination procedures shall be deferred, if appropriate, when there is an unavoidable change of representative payees or other responsible parties. Examples of this would be the death of a LRR or representative payee, the transfer of representative payee, or the appointment of or change in a legal guardian. In such instances, the Division shall be notified of this change as soon as possible.
- (k) Where the individual receiving services has a court appointed legal guardian, but controls his or her own funds and refuses to make the assessed payments, the Division may seek, in addition to other available remedies, to have a guardian of the property appointed.

SUBCHAPTER 6. APPEALS PROCESS

10:46D-6.1 Appeals

- (a) A request for an adjustment shall not be considered to be an appeal.
No adjustment other than those permitted in N.J.A.C. 10:46D-3.1(g) shall be permitted. Such requests shall be directed to the Interdisciplinary Team.
- (b) Any change to unearned income or income from wages shall not be a basis for an appeal. Changes to income shall be addressed according to N.J.A.C. 10:46D-2.2(h).
- (c) Annual increases to Social Security benefits shall not be the basis for an appeal. Such increases will be addressed at the time of the annual assessment.
- (d) Any request for an appeal shall be made within 60 days from the date of the letter notifying the individual, legal guardian or the LRR of the calculated amount, in accordance with the procedure set forth below:
 - 1. The request for an appeal shall clearly identify the individual receiving services, the provider agency or developmental center where the individual resides and the specific issue under appeal. The appeal shall specify all material facts that the individual, legal guardian or LRR(s) or his or her attorney disputes.
 - 2. Requests for an appeal shall also set forth all issues which the individual, legal guardian or LRR(s) is raising on appeal and shall

present all arguments on those issues which the individual, legal guardian or LRR(s) wishes the Division to consider. The individual, legal guardian or LRR(s) shall explain in detail why they disagree with the calculated amount.

- i. If the individual is receiving residential services, he or she or the LRR(s) shall be responsible to begin to pay the assessed amount unless otherwise agreed to by the Division.
- ii. The request for an appeal shall be sent to:

Administrative Practice Officer
 Division of Developmental Disabilities
 P.O. Box 708
 Trenton, NJ 08625-0708

3. All termination proceedings shall be suspended during the pendency of the appeal process.

- (e) The Division shall acknowledge receipt of the appeal within 60 days of receipt.
- (f) Where an appeal request appears to set forth disputed material facts, the Director shall request an informal meeting to administratively resolve this matter. The Director shall appoint a designee to meet with the appellant. If the matter

cannot be resolved, the Director shall transmit this matter to the Office of Administrative Law (OAL) for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. And the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

- (g) The Division shall transmit this matter to the OAL within 60 days of the informal meeting.
- (h) In the event an individual, legal guardian or LRR(s) fails to attend an informal conference wherein an adjournment has not been granted, the Division shall determine that the individual, legal guardian or LRR(s) has abandoned the request for a hearing and shall issue a Final Decision.
- (i) Where there are no disputed material facts and an appeal sets forth one or more disputed legal issue(s) and presents arguments on these issues, the Director may consider those legal issues and arguments in a paper review of the written record. There shall be no discovery, but the individual, legal guardian or LRR(s) shall have the opportunity to submit written arguments. The Director shall consider these arguments, if any, the materials presented at the pre-transmittal conference, if any and all prior documents regarding the determination of fees. The Director shall render a written determination that shall constitute the final agency decision in the matter.